

N.D.A.G. Letter to Larson (Aug. 9, 1988)

August 9, 1988

Mr. Bruce Larson
Registrar
Motor Vehicle Department
Capitol Grounds
Bismarck. ND 58505

Dear Mr. Larson:

Thank you for your letter of June 27, 1988, concerning the proposed reciprocal agreement between the state of North Dakota and the Fort Totten Indian Reservation regarding the recognition of motor vehicle registrations issued by the reservation.

Your letter poses four questions concerning the proposed reciprocal agreement. Three of the four questions concern the ability of the Motor Vehicle Department, or some other department, to enter into such a reciprocal agreement.

The subject of reciprocal agreements involving the use of state highways is addressed by N.D.C.C. § 39-19-01. That statute provides as follows:

39-19-01. Highway commissioner -- Reciprocity powers. The commissioner or the motor vehicle registrar shall have the power to execute agreements, arrangements, or declarations involving the reciprocal use of the highways of this state by vehicles excepted in part or in full from registration requirements or mile tax payments in lieu thereof, or involving reciprocity between this state and any other state on matters relating to drivers' licensing, financial responsibility, traffic law enforcement, vehicle sizes and weights, and vehicle inspection.

N.D.C.C. § 39-19-01 clearly authorizes the Highway Commissioner and the Motor Vehicle Registrar to enter into only two types of reciprocity agreements: first, agreements involving the registration of those vehicles "excepted in part or in full from registration requirements or mile tax payments in lieu thereof" and, second, reciprocity agreements with other states on matters "relating to drivers' licensing, financial responsibility, traffic law enforcement, vehicle sizes and weights, and vehicle inspection." Thus, reciprocal agreements involving vehicle registration are permitted only where the vehicles are excepted in full or in part from registration requirements. If the vehicles in question are not excepted from registration requirements of North Dakota, the Motor Vehicle Registrar and the Commissioner of the Highway Department do not have any authority pursuant to this statute to execute a reciprocal agreement discussing registration recognition.

To determine whether motor vehicles registered by an Indian reservation are excepted

from our state registration requirements, N.D.C.C. § 39-04-18 must be reviewed. The statute exempts from the North Dakota motor vehicle registration requirements those vehicles registered in any other state or territory which come within this state. N.D.C.C. § 39-04-18(2)(e). Motor vehicles owned and operated by the United States government or any foreign government or their agencies are also exempted from registration requirements. N.D.C.C. § 39-04-18(2)(d).

Motor vehicles with registrations issued by Indian reservations do not fall within either of the two statutory categories just described. As stated above, an Indian reservation is not a state. N.D.C.C. § 39-01-01(72). In addition, vehicles registered by a reservation do not constitute vehicles owned and operated by the United States government or any foreign government.

N.D.C.C. § 39-04-18 does not exempt from North Dakota motor vehicle registration requirements those vehicles which have been registered by an Indian reservation. Based upon my earlier conclusion concerning the authority of the motor vehicle registrar and the Highway Department Commissioner to enter into reciprocal agreements, it is my opinion that there is no statutory authority by which any agency of the state may enter into a reciprocal agreement regarding vehicle registration with an Indian reservation. For such an agreement to occur, an amendment must be made either to N.D.C.C. § 39-19-01 or N.D.C.C. § 39-04-18.

Your final question concerns the authority of the Indian reservation to extend their motor vehicle registration plan to non-enrolled members of the tribe residing on the reservation. A review of the proposed registration plan of the Indian reservation indicates that the registration requirements would apply to those persons operating motor vehicles on highways of the reservation. The plan also provides for a fine of \$75, imprisonment of one month, or both upon a violation of its provisions.

I am reluctant to draw specific conclusions concerning the authority of an Indian reservation to enforce its motor vehicle registration plan on nonmembers. Opinions of the Attorney General are not binding upon Indian tribes. However, I can provide you with recent case law which seriously questions the validity of the tribe's criminal jurisdiction over nonmembers in the enforcement of this registration plan.

Recently, the Eighth Circuit Court of Appeals concluded that tribal courts are without criminal jurisdiction over nonmembers. Greywater v. Joshua, et al., No. 87-5233 (8th Cir., May 10, 1988). The Eighth Circuit reached this decision based upon statements of the United States Supreme Court indicating that Indian tribes could not try nonmembers in tribal courts. United States v. Wheeler, 435 U.S. 313 (1978); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978). However, the Ninth Circuit Court of Appeals has reached the direct opposite conclusion in Duro v. Reina, 821 F.2d 1358 (9th Cir. 1987).

As we are within the Eighth Circuit Court of Appeals, I believe the decision in Greywater is controlling. Tribal courts are without criminal jurisdiction over nonmembers. An attempt to enforce the motor vehicle registration plan in tribal court against nonmembers of the tribal

reservation would appear to run afoul of the Eighth Circuit decision in Greywater.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

cv